Office Supreme Court
JAN 22 19
CHARLES ELMORE

FILE COPY

No. 125

In the Supreme Court of the United States

OCTOBER TERM, 1930

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, No. 31, PETITIONER

v.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Specification of errors to be urged	3
Summary of argument	4
Argument:	
I. The respondent's deportation was authorized by Section 14 of the Immigration Act of 1924	5
II. Section 34 of the Immigration Act of 1917 does not bar the deportation of the respondent	8
Conclusion	17
Appendix (Statutes and Regulations involved)	18

CITATIONS

Cases:	
Cellamare v. *Day*, 32 F. (2d) 623	13
Nagle v. *Hansen*, 17 F. (2d) 557	13
Nagle v. *Mendoza*, 41 F. (2d) 745	13
Philippides v. *Day*, 37 F. (2d) 1015	12, 14
Piccolella v. *Commissioner of Immigration*, 36 F. (2d) 1022, certiorari denied, 281 U. S. 723	12
Sturm, Ex parte, 38 F. (2d) 272	13
United States ex. rel. Anastasios Cateches v. *Day* (C. C. A. 2d), decided November 6, 1930	12, 13
United States ex rel. Bardakos v. *Mudd*, 33 F. (2d) 334	12
United States ex rel. Costas Cateches v. *Day* 41 F. (2d) 1019	12
United States ex rel. Danikas v. *Day*, 20 F. (2d) 733	11, 16
United States ex rel. Georgas v. *Day*, 43 F. (2d) 917	16
United States ex rel. Linklater v. *Commissioner of Immigration*, 36 F. (2d) 239	11
United States ex rel. Rios v. *Day*, 24 F. (2d) 654, certiorari denied, 277 U. S. 604	12
United States ex rel. Shore v. *Day*, 36 F. (2d) 264	11
United States v. *Wong You*, 223 U. S. 67	12
Zurbrick v. *Traicoff*, 38 F. (2d) 811	12

Statutes: Page

Immigration Act of 1917, c. 29, 39 Stat. 874, 875, 889, 890, 895-896—
Sec. 3 (U. S. C., Title 8, Sec. 136) 10
Sec. 19 (U. S. C., Title 8, Sec. 155) 10, 11, 20
Sec. 20 (U. S. C., Title 8, Sec. 156) 20
Sec. 32 ..... 10, 18
Sec. 33 (U. S. C., Title 8, Sec. 168) 19
Sec. 34 (U. S. C., Title 8, Sec. 166) 8, 9, 10, 11, 12, 13, 15, 16, 19
Act of May 19, 1921, c. 8, 42 Stat. 5 6
Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 161-164, 168—
Sec. 3 (U. S. C., Title 8, Sec. 203) 6, 8, 20
Sec. 13 (a) (U. S. C., Title 8, Sec. 213) 14, 20
Sec. 14 (U. S. C., Title 8, Sec. 214) 5, 6, 8, 11, 12, 13, 14, 15, 16, 20
Sec. 15 (U. S. C., Title 8, Sec. 215) 6, 7, 11, 15, 20
Sec. 19 (U. S. C., Title 8, Sec. 166) 6-7, 9, 13, 14, 15, 20
Sec. 20 (d) (U. S. C., Title 8, Sec. 167) 10, 18, 20-21
Sec. 24 (U. S. C., Title 8, Sec. 222) 22
Sec. 25 (U. S. C., Title 8, Sec. 223) 9-10, 22
Sec. 28 (b) (U. S. C., Title 8, Sec. 224) 13, 22

Miscellaneous:
General Order, No. 38, Par. 6 (c) 8, 23
Immigration Rules, July 1, 1925, Rule 6, Sub. I—
Par. 1 23-24
Par. 2 ..... 7-8, 24
Par. 3 25
Immigration Rules, January 1, 1930, Rule 7, Sub. I, Par. 1 25

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 125

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE United States for the Los Angeles District, No. 31, petitioner

v.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 15) is reported in 37 F. (2d) 1016. The District Court rendered no opinion.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 17, 1930. (R. 16.) The petition for certiorari was filed in this Court on

May 16, 1930, and certiorari was granted October 13, 1930. (R. 16.) The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien who arrived in this country as a seaman after the effective date of the Immigration Act of 1924 and then deserted, and who remained here for a longer period than permitted by the regulations of the Department of Labor promulgated under that Act, may be deported at any time as provided in that Act, or only within three years after entry.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 18–25.

STATEMENT

The following facts are shown by the petition for *habeas corpus* and return of the Director of Immigration, who is petitioner here.

The respondent is an alien and a citizen of Jugoslavia. He signed on the Italian Steamship *Livenza* at Hamburg, Germany, about November, 1924, as a seaman. The vessel arrived at San Pedro, California, on or about January 21, 1925. (R. 6–7.) The respondent then deserted the ship and has remained in the United States continuously

ever since. (R. 2, 7.) He was taken into custody on a warrant of arrest issued on October 5, 1928, by the Secretary of Labor, charging that the respondent had been found in the United States, in violation of the Immigration Act of May 26, 1924, in that he "had remained in the United States for a longer time than permitted under the said act or regulations made thereunder." (R. 7.) Thereafter, the Secretary of Labor issued a warrant of deportation (R. 7) on the ground stated in the warrant of arrest. (R. 2.)

Thereupon the respondent sued out a writ of *habeas corpus* in the District Court for the Southern District of California. The writ was sustained and the petitioner discharged from custody, without opinion. (R. 9.) On appeal, the Circuit Court of Appeals affirmed the order of the District Court. (R. 15.)

SPECIFICATION OF ERRORS TO BE URGED

1. The court erred in affirming the order of the trial court.

2. The court erred in holding that the three-year statute of limitation as provided in Section 34 of the Immigration Act of 1917 prevented the deportation of respondent.

3. The court erred in holding that the respondent could not be deported as provided by Section 14 of the Immigration Act of 1924, without regard to the time of his entry.

SUMMARY OF ARGUMENT

The deportation of the respondent was authorized by Section 14 of the Immigration Act of 1924. That section provides that "any alien who at any time after entering the United States is found * * * to have remained therein for a longer time than permitted under this act or regulations made thereunder, shall be taken into custody and deported * * *." The respondent has remained in this country for a longer time than that allowed by regulations issued under Section 15 of the Immigration Act of 1924. His deportation is therefore required by Section 14 of that Act.

Section 34 of the Immigration Act of 1917 is not applicable to the respondent. The ruling of the courts below apparently rests on the ground that Section 34 of the 1917 Act limits the time within which an alien seaman can be arrested for deportation to three years after his landing in the United States. But Section 34 by its express terms relates only to seamen "who shall land * * * contrary to the provisions of this Act." Whether the respondent's entry was contrary to the 1917 Act or not, Section 34 of that Act can not affect a proceeding brought under the express terms of Section 14 of the 1924 Act relating to alien seamen who remain in the United States for a longer time than permitted by regulations issued under that Act. The respondent's deportation was based on the latter ground, and was authorized without limitation as to time by Section 14 of the 1924 Act.

Section 14 of the 1924 Act clearly relates to alien seamen as well as to other aliens. The opposite view, apparently taken by the courts below, can not be supported. Alien seamen are expressly included in Section 15 of the 1924 Act as being among those concerning whom the Secretary of Labor may make regulations governing the length of their stay in the United States. And Section 19 clearly refers to all alien seamen who, like the respondent, were not eligible for permanent admission into the United States.

There is nothing in the legislative history to support the construction adopted by the courts below. Furthermore, that construction would leave the Department of Labor without any means of deporting alien seamen who remain in this country longer than is allowed by the regulations. The construction urged by the Government, on the other hand, gives full force and effect to both Section 34 of the 1917 Act and Section 14 of the 1924 Act.

ARGUMENT

I

THE RESPONDENT'S DEPORTATION WAS AUTHORIZED BY SECTION 14 OF THE IMMIGRATION ACT OF 1924

The Immigration Act of 1917 provided for the admission of immigrants on a selective basis. By its provisions, immigrants with certain physical, mental, or moral defects were made inadmissible; but under the 1917 Act there was no numerical lim-

itation on immigration. The first numerical limit was imposed by the Quota Act of May 19, 1921, c. 8, 42 Stat. 5. That Act was superseded by the Immigration Act of 1924, which continued in effect the policy of limiting the admission of aliens on a numerical basis. But the 1924 Act did not replace the 1917 Act, and the selective requirements of that Act continued in effect. Although both Acts are now in force, they are nevertheless distinct Acts with distinct, though related, purposes.

Section 14 of the Immigration Act of 1924 (*infra,* pp. 20–21) provides—

> Any alien who *at any time* after entering the United States is found to have been at the time of entry not entitled under this act to enter the United States, or to have remained therein for a longer time than permitted under this act or regulations made thereunder, shall be taken into custody and deported * * *. (Italics ours.)

The respondent arrived as a seaman. (R. 2.) He was, therefore, a nonimmigrant as that term is defined in Section 3, subdivision (5) of the Immigration Act of 1924 (*infra,* p. 20). Under Section 15 of the Immigration Act of 1924 (*infra,* p. 21) he was therefore admissible to the United States "for such time as may be by regulations prescribed * * *." It is also provided in Section 19 of the Immigration Act of 1924 (*infra,* p. 21)

that no alien seaman [1] shall be permitted to land in the United States except "pursuant to such regulations as the Secretary of Labor may prescribe * * *." It follows, therefore, that if the respondent has stayed longer in the United States than is allowed by the regulations made under Sections 15 and 19 of the Immigration Act of 1924, he may be deported under the express provisions of Section 14 of that Act requiring the deportation of an alien who is found "at any time after entering the United States" to have remained "for a longer time than permitted under this act or regulations made thereunder."

By regulations promulgated by the Secretary of Labor, under the authority of Section 15 of the Immigration Act of 1924, *bona fide* alien seamen are permitted to remain within the United States for sixty days. Paragraph 2 of Rule 6, Subdivision I, of the immigration rules promulgated by the Secretary of Labor on July 1, 1925 [2] (*infra*, p. 24), provides that—

> When a bona fide alien seaman * * * permitted to enter temporarily the United

[1] The section relates to alien seamen "excluded from admission into the United States under the immigration laws." As respondent does not assert that he had any right to admission, this section is applicable. (See p. 14, *infra*.)

[2] Paragraph 6(c) of General Order No. 38 (*infra*, p. 23), issued by the Department of Labor on September 10, 1924, is substantially the same, and was in effect when the seaman involved in the instant case arrived in this country.

> States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than 60 days after such entry, he shall * * * be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

The respondent's situation is clearly covered by this regulation. He entered the country as a *bona fide* alien seaman and was consequently one of the class who are "permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924." He has remained within the United States for more than sixty days after his entry. He has consequently remained longer within the United States than is permitted by the regulations, and his deportation is, therefore, required by Section 14 of the Immigration Act of 1924.

II

SECTION 34 OF THE IMMIGRATION ACT OF 1917 DOES NOT BAR THE DEPORTATION OF THE RESPONDENT

The ruling of the courts below apparently rests upon the assumption that Section 34 of the Immigration Act of 1917 limits the time within which an alien seaman can be arrested for deportation

to three years after his landing in a port of the United States. We submit that this section has no application to the respondent.[3]

Section 34 of the Immigration Act of 1917 (*infra*, p. 19) provides—

> That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported * * *.

There is nothing in the Immigration Act of 1924 or in any other Act which expressly repeals Section 34 of the 1917 Act. But Section 25 of the 1924 Act provides that—

> The provisions of this act are in addition to and not in substitution for the provisions

[3] The compilers of the United States Code have combined into one section (Title 8, Section 166) both the provisions of Section 19 of the Immigration Act of 1924 and those of Section 34 of the Act of 1917. Besides combining the two sections certain changes of language have been made which convey the impression that deportation of alien seamen who have remained longer than allowed by regulations issued under Section 19 of the 1924 Act is limited by the three-year limitation contained in Section 34 of the 1917 Act. But this action by the compilers of the Code neither repeals nor amends the preexisting statutes. Section 2(a) of the enacting clause.

> of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act.

It thus becomes necessary to determine whether Section 34 of the 1917 Act is "inapplicable" either because of its terms or on account of the passage of the Immigration Act of 1924.

Section 34 by its express terms relates only to a seaman "who shall land * * * contrary to the provisions of this Act." "This Act" is of course the Immigration Act of 1917. For Section 34 to be applicable it must, therefore, be found that the seaman in question landed contrary to some provision of the 1917 Act. Apart from certain provisions not material here, the sections of the 1917 Act providing for the exclusion or deportation of aliens are Sections 3, 19, and 32.

Section 32 of the Immigration Act of 1917 was expressly repealed by Section 20 (d) of the Immigration Act of 1924 (*infra,* pp. 21–22) which was enacted nearly a year before the respondent's entry into the United States. It follows, therefore, that the respondent did not land in the United States contrary to the provisions of Section 32 of the 1917 Act.

Sections 3 and 19 of the 1917 Act provide for the exclusion or deportation of aliens with certain specified physical, mental, or moral defects. There is nothing to indicate that the respondent was inad-

missible under these provisions. Section 19 of the 1917 Act further provides that—

> At any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials * * * or who enters without inspection, shall * * * be taken into custody and deported.

It is doubtful whether Section 19 has any application to the deportation of alien seamen on account of inadmissibility at time of landing. See *United States ex rel. Danikas* v. *Day,* 20 F. (2d) 733 (C. C. A. 2d). Moreover, it is difficult to tell from the present record whether the respondent landed in violation of this provision. Absence of proof of a lawful entry is not evidence of an unlawful entry. *United States ex rel. Linklater* v. *Commissioner of Immigration,* 36 F. (2d) 239 (S. D. N. Y.); *United States ex rel. Shore* v. *Day,* 36 F. (2d) 264 (S. D. N. Y.).

But even if it be assumed that the respondent's entry was without inspection and also that it violated the provision of Section 19 quoted above, the only consequence is that the respondent may not now be deported for that offense. He was a seaman when he entered, and under Section 15 of the 1924 Act was admissible for the time prescribed in the regulations of the Department of Labor. His remaining longer than that time was a distinct ground for deportation under Section 14 of the 1924 Act. Even if what he did was covered by Section

34 of the 1917 Act that fact did not make him any the less subject to the provisions of Section 14 of the 1924 Act. *United States* v. *Wong You*, 223 U. S. 67.

Section 14 of the 1924 Act expressly provides for the deportation at any time of an alien who has remained longer within the United States than the time allowed by the regulations of the Labor Department. The respondent came within the terms of this section and his deportation was properly ordered under its provisions. This view was adopted in *Zurbrick* v. *Traicoff*, 38 F. (2d) 811 (C. C. A. 6th). See also *United States, ex rel. Anastasios Cateches* v. *Day* (C. C. A. 2d), decided November 6, 1930, not yet reported; *United States ex rel. Bardakos* v. *Mudd*, 33 F. (2d) 334 (D. Md.).

Another view which has been adopted in some cases is that Section 34 of the 1917 Act continued to be applicable to seamen who landed before the passage of the Act of 1924, but that on account of the general provisions of Section 14 of the 1924 Act it became "inapplicable" to those who landed after that Act was passed. This view was adopted in *United States ex rel. Rios* v. *Day*, 24 F. (2d) 654 (C. C. A. 2d),[4] certiorari denied, 277 U. S. 604;

[4] This decision was followed by the Circuit Court of Appeals for the Second Circuit in *Piccolella* v. *Commissioner of Immigration*, 36 F. (2d) 1022, certiorari denied, 281 U. S. 723; *Philippides* v. *Day*, 37 F. (2d) 1015, now pending as No. 92, October Term, 1930; *United States ex rel. Costas Cateches* v. *Day*, 41 F. (2d) 1019, now pending as No. 336, October Term, 1930.

Cellamare v. *Day*, 32 F. (2d) 623 (S. D. N. Y.); *Ex parte Sturm*, 38 F. (2d) 272 (S. D. N. Y.). See also *United States ex rel. Anastasios Cateches* v. *Day, supra.*

It has been contended that the effect of Section 34 of the 1917 Act is to make Section 14 of the Immigration Act of 1924 inapplicable to alien seamen. This was apparently the view taken, as to another question, in *Nagle* v. *Hansen*, 17 F. (2d) 557 (C. C. A. 9th), and followed by the court below in the instant case, and in *Nagle* v. *Mendoza*, 41 F. (2d) 745. It is urged in behalf of the seamen that the Immigration Act of 1924 refers to three distinct classes of individuals, "immigrants," "aliens," and "alien seamen," that Section 14 relates only to "aliens" and not to "alien seamen," and that Section 19 refers only to alien seamen who are excludable for some personal reason, such as those from the barred zone.

We submit that this construction can not be sustained. The term "alien" is broader than "alien seamen," and is defined in Section 28 of the 1924 Act (*infra*, p. 22) to include "any individual not a native-born or naturalized citizen of the United States" except "Indians of the United States not taxed" and "citizens of the islands under the jurisdiction of the United States." The term "alien" therefore includes "alien seamen." It is obviously so used at the end of Section 19 of the 1924 Act. Section 34 of the 1917 Act relates only to alien seamen; but there is nothing to exclude

alien seamen from the operation of Section 14 of the 1924 Act, and, indeed, as has been pointed out above (*supra,* p. 7), "alien seamen" are by the express provisions of Section 15 included among those concerning whom the Secretary of Labor may make regulations, the violation of which is ground for deportation under Section 14.

Nor do we believe that there is any ground for a construction of Section 19 which would limit the application of that section to alien seamen from the barred zones. The section by its terms refers to alien seamen "excluded from admission into the United States under the immigration laws." We understand this language to refer to all alien seamen who would be ineligible for permanent entry into the United States. The respondent has not shown that he was not such an alien seaman, for he has not shown that he was in possession of an immigration visa. See Section 13 (a) of the Immigration Act of 1924.

Counsel for the petitioner in his brief in support of the petition for certiorari in the case of *Philippides* v. *Day,* now pending before this Court as No. 92, October Term, 1930, urges that the legislative history shows that Congress did not intend that Section 14 of the Immigration Act of 1924 should apply to alien seamen nor that Section 19 should apply to alien seamen other than those from the barred zone. Reliance is placed on various

statements made on the floor of Congress. An examination of the Committee Reports (House Reports Nos. 350, 688, and 716, 68th Congress, 2nd Session) and of these statements makes it clear, we agree, that Congress did not intend to repeal Section 34 of the 1917 Act. But we do not find anything in this legislative history which indicates that the plain language of Section 19 should be restricted so as to apply only to seamen from the barred zone.

Furthermore, the regulations which the respondent violated were issued under Section 15 of the 1924 Act as well as under Section 19; and there is a complete absence of anything in the legislative history to qualify Section 15 in its obvious application to alien seamen.

Such a construction would deprive the Secretary of Labor of all authority to deport an alien seaman, allowed to enter the United States as a nonimmigrant, who stayed longer than the period prescribed in the regulations. Section 34 of the 1917 Act would not apply, for that Section relates only to seamen "who shall land * * * contrary to the provisions" of the 1917 Act; and Section 14 of the 1924 Act would not apply under the argument that it relates only to aliens other than alien seamen. This contention thus practically nullifies the immigration laws so far as alien seamen are concerned. Such a construction should not be adopted, especially in view of the fact that Section 14 of the 1924 Act by its express terms relates to "any alien."

On the other hand, the Government's position does not operate to nullify Section 34 of the 1917 Act. That section is undoubtedly still in force and applicable to seamen who landed prior to the enactment of the 1924 Act. See *United States ex rel. Danikas* v. *Day*, 20 F. (2d) 733 (C. C. A. 2d). It may also be applicable to seamen who land after that time in violation of the 1917 Act. Section 14 of the 1924 Act is applicable to alien seamen whose landing is permitted by the 1924 Act but who remain longer than is allowed by the regulations issued under that Act. That the old rule should be applied to seamen who arrive before the passage of the Act of 1924 is not incongruous. It avoids giving retroactive effect to the new rule. If the Act of 1917 now applies to aliens who come here in violation of that Act and are not found here in violation of the 1924 Act, the old rule is continued in effect in cases where the new rule does not apply. There is nothing incongruous in this, and if there were, there would be no reason for ignoring the plain provision of the statute. As the court said in *United States ex rel. Georgas* v. *Day*, 43 F. (2d) 917, 919 (C. C. A. 2d)—

> statutory provisions, so confused, contradictory, minute and manifold, as the immigration laws, inevitably produce such caprices. Still the whimsies that they create give us no power to dispense with the language; indeed, the more detailed they are, the less latitude we are given, perhaps deliberately.

CONCLUSION

The judgment below is erroneous and should be reversed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.

CLAUDE R. BRANCH,
NUGENT DODDS,
Special Assistants to the Attorney General.

HARRY S. RIDGELY,
ERWIN N. GRISWOLD,
Attorneys.

ALBERT E. REITZEL,
B. W. BUTLER,
Assistant Solicitors,
Department of Labor,
Of Counsel.

JANUARY, 1931.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

STATUTES

The Immigration Act of 1917, c. 29, 39 Stat. 874, 895–896, provides in part:

> SEC. 32.[1] That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding $1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

---

[1] This section was repealed by Section 20(d) of the Immigration Act of 1924 (*infra*, pp. 21–22).

SEC. 33. That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided,* That in case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this Act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival. (U. S. C., Title 8, Sec. 168.)

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act. (U. S. C., Title 8, Sec. 166.)

The Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 161–164, 166, 168, provides in part:

> SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, * * *. (U. S. C., Title 8, Sec. 203.)
>
> SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a nonquota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws. (U. S. C., Title 2, Sec. 213.)
>
> SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917[2]: *Provided*, That the Secretary of La-

[2] Sections 19 and 20 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 889, 890 (U. S. C., Title 8, Secs. 155, 156), referred to in this section, make no provision for a board of special inquiry, nor do they require that before deportation can be had there must be an examination into the qualifications for admission of the offending seaman.

bor may, under such conditions and restrictions as to support and care as he may deem necessary, permit permanently to remain in the United States, any alien child who, when under 16 years of age was heretofore temporarily admitted to the United States and who is now within the United States and either of whose parents is a citizen of the United States. (U. S. C., Title 8, Sec. 214.)

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clauses (2), (3), (4), or (6) of section 3, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. (U. S. C., Title 8, Sec. 215.)

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States. (U. S. C., Title 8, Sec. 166.)

SEC. 20. * * *

(d) Section 32 of the Immigration Act of 1917 is repealed, but shall remain in force

as to all vessels, their owners, agents, consignees, and masters, and as to all seamen, arriving in the United States prior to the enactment of this Act.

SEC. 24. The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; but all such rules and regulations, in so far as they relate to the administration of this Act by consular officers, shall be prescribed by the Secretary of State on the recommendation of the Secretary of Labor. (U. S. C., Title 8, Sec. 222.)

SEC. 25. The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act. An alien, although admissible under the provisions of this act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this act, and an alien, although admissible under the provisions of the immigration laws other than this act, shall not be admitted to the United States if he is excluded by any provision of this act. (U. S. C., Title 8, Sec. 223.)

SEC. 28 (b). The term "alien" includes any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United States not taxed, nor citizens of the islands under the jurisdiction of the United States. (U. S. C., Title 8, Sec. 224.)

REGULATIONS

Paragraph 6(c) of General Order No. 38, issued by the Department of Labor on September 10, 1924, provides:

> Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than sixty days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of subdivision (5) of Section 3 of the Immigration Act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of Section 14 of said Act.

Rule 6, Subdivision I, paragraphs 1, 2, and 3, of the Immigration Rules of the Department of Labor, promulgated July 1, 1925, provides as follows:

> PAR. 1. Any alien who shall come to a United States port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the act of February 5, 1917, shall be arrested, as provided in section 34 of said act, whenever and wherever found in this country within three years from the date of landing. Such alien then shall be brought before a board of special inquiry and subjected to a thorough examination under all provisions of the immigration law applicable to the case of an alien seeking

admission; such investigation, if any, as may be necessary to develop evidence concerning him shall be conducted and he shall be subjected also to the medical examination required in the cases of alien applicants for admission: *Provided,* That his qualifications for admission to the United States shall be determined according to the immigration laws, rules, and regulations in force at the time of such examination. If such seaman is rejected by the board he shall be allowed an appeal to the department unless the rejection is upon a ground with respect to which the law prohibits an appeal; and in any event the record of the board of special inquiry shall be transmitted to the bureau for submission to the department, in order that a final decision may be rendered if upon appeal and that a warrant of deportation may be issued whether upon appeal or not. Upon the issuance of the warrant the alien shall be deported at the expense of the immigration appropriation.

PAR. 2. Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than 60 days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

PAR. 3. If the alien is charged in the warrant of arrest merely with entering contrary to the provisions of section 34 of the act of February 5, 1917, the conduct of the hearing shall be governed by subdivision B of rule 11. But if the warrant is based on some other charge, the conduct of the hearing shall be governed by subdivision D of rule 18.

These rules were included without change in the immigration rules of the Department of Labor, promulgated March 1, 1927.

In the immigration rules promulgated by the Department of Labor on January 1, 1930, paragraphs 1 and 3, *supra,* were omitted, and paragraph 2, *supra,* was retained as paragraph 1 of Rule 7, Subdivision I.

U. S. GOVERNMENT PRINTING OFFICE: 1931